

evidence in any case as a witness; or by a defendant who is incapable of making oath.

\* On discovering, at the hearing, that a party had failed to take some material testimony, the case was, on affidavit, continued, and a commission issued to take the evidence. **126**

shon. *Ibid.*, 437; *Nicodemus v. Nicodemus*, 41 Md. 538. It is not necessary to aver in words, that the injury is irreparable, but the facts showing it to be so must be stated in the bill. *White v. Flannigan*, 1 Md. 543, 550.

Applications to restrain party claiming title to land from cutting down trees refused, because remedy at law sufficient. *Green v. Keen*, 4 Md. 106; *Powell v. Rawlings*, 38 Md. 239. Refused because plaintiff's right of possession insufficient. *Dean v. Brown*, 23 Md. 11. Acts which would result in the destruction of all the timber on a man's home plantation, where wood and timber are necessary to the enjoyment of the property in that character, are sufficient to authorize an injunction to restrain the cutting of such wood and timber. *Davis v. Reed*, 14 Md. 152. The destruction of ornamental and fruit trees will be prevented by injunction, on the ground that it is an irreparable mischief, going to the destruction of the estate in the character in which it is enjoyed. *Shipley v. Ritter*, 7 Md. 408. When there is no dispute as to title and the land is plaintiff's dwelling plantation, and a portion of it is in timber, valuable for protection and ornament, and the defendants have, without authority, cleared up part of this timber land and converted it into pasture and are continuing to clear up the rest, it is a case of irreparable mischief which equity will restrain by injunction. *Ibid.* Injunction granted to restrain destruction of timber until the land could be sold for the benefit of those entitled. *Fulton v. Harman*, 44 Md. 252.

Application by a tenant against his lessor to restrain demolition of the building refused, it not appearing from the bill that the complainant had performed his covenants under the lease. *Johnston v. Glenn*, 40 Md. 200. Where after the filing of a bill praying that the defendant be enjoined from the use of a division wall between his lot and that of the complainant, the latter sells his property, the injunction will not issue. *Lanahan v. Gahan*, 37 Md. 105. A. obtained an injunction to prevent B. from tearing down the end wall of his house. B. stayed the operation of the writ by an appeal bond and completed the tearing down of the wall and erected on his lot a house, one of the walls of which was built upon the space formerly occupied by the wall he had pulled down. Held, that if the right of A. to an injunction were afterwards established he would be permitted, by an amendment of his bill as to parties and prayer, to obtain such relief as he might appear to be entitled to under the change of circumstances produced since the original injunction by the act of B. *Hiss v. McCabe*, 45 Md. 77. But as it appeared that A. had not the legal title to the 9 inches of ground in question at the time of filing the bill, the injunction was dissolved and the bill dismissed. *Ibid.*

Upon a bill by a widow to whom land had been devised for life and her children, to whom the remainder was limited, charging the defendant with an unlawful and violent entry upon the land, taking the products thereof, and depriving the complainants of their means of support and praying that he may be compelled to surrender the land sued for, an injunction and receiver *pendente lite*, it was held, 1. That the facts charged in the bill do not show that the defendant was committing irreparable damage to the property, to prevent which an injunction was necessary. 2. That the case presented by the bill is proper for redress at law, where the remedy is ample, by action